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of another. That the Kingdom was then Elective, though one or other of the Royal Blood was always chosen, but the next in Lineal Succession very seldom, is evident from the Constitutions of the Saxon Kings; from an old Law made at Canons, appointing how, and by whom Kings shall be chosen; and from many express and particular Accounts given by our old Historians, of such Assemblies held for Election of Kings. Now such Assemblies could not be summoned by any King; and yet in conjunction with the King, that themselves set up, they made Laws, binding the King, and all the Realm.

After the Death of King William Rufus, Robert, his Elder Brother, being then in the Holy Land, Henry, the youngest Son of King William the first, received an Assembly of the Nobles and People of England, to whom he made large promises of his good Government. He then returned, and was crowned King. He made him their King: He swore that he would do to, and also

PARLIAMENT.

That the formality of the King's Writ of Summons is not so essential to an *English* Parliament, but that the Peers of the Realm, and the Commons, by their Representatives duly Elected; may legally act as the great Council and representative Body of the Nation, though not summoned by the King, especially when the circumstances of the time are such, that such Summons cannot be had, will (I hope) appear by these following Observations.

First, The *Saxon* Government was transplanted hither out of *Germany*, where the meeting of the *Saxons* in such Assemblies was at certain fixed times; viz. at the New and Full Moon. But after their Transmigration hither, Religion changing, other things changed with it; and the times for their publick Assemblies, in conformity to the great Solemnities celebrated by Christians, came to be changed to the Feasts of *Easter*, *Pentecost*, and the *Nativity*. The lower we come down in Story, the seldomer we find these General Assemblies to have been held; and sometimes (even very anciently) when upon extraordinary occasions, they met out of course, a *Precept*, an *Edit*, or *Sanction* is mentioned to have Issued from the King: But the Times, and the very place of their ordinary Meeting having been certain, and determined in the very first and eldest times that we meet with any mention of such Assemblies, which times are as ancient as any Memory of the Nation it self; hence I infer, that no Summons from the King can be thought to have been necessary in those days, because it was altogether needless.

Secondly, The Succession to the Crown did not in those days, nor till of late years, run in a course of Lineal Succession by right of Inheritance: But upon the death of a Prince, those Persons of the Realm that Composed the then Parliament, Assembled in order to the choosing

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of another. That the Kingdom was then Elective, though one or other of the Royal Blood was always chosen, but the next in Lineal Succession very seldom, is evident from the Genealogies of the *Saxon* Kings, from an old Law made at *Catchmayth*, appointing how, and by whom Kings shall be chosen; and from many expresse and particular Accounts given by our old Historians, of such Assemblies held for Electing of Kings. Now such Assemblies could not be Summon'd by any King; and yet in conjunction with the King that themselves set up, they made Laws, binding the King and all the Realm.

Thirdly, After the Death of King *William Rufus*, *Robert*, his Elder Brother, being then in the *Holy Land*, *Henry*, the youngest Son of King *William* the First, procur'd an Assembly of the Clergy and People of *England*, to whom he made large promises of his good Government, in case they would accept of him for their King; and they agreeing, That if he would restore to them the Laws of King *Edward the Confessor*, then they would consent to make him their King: He swore that he would do so, and also free them from some oppressions, which the Nation had groan'd under in his Brothers and his Fathers time. Hereupon they chose him King, and the Bishop of *London*, and the Archbishop of *York*, set the Crown upon his Head: Which being done, a Confirmation of the *English* Liberties pass'd the Royal Assent in that Assembly, the same in substance, though not so large as King *John's*, and King *Henry* the Third's *Magna Charta's* afterwards were.

Fourthly, After that King's Death, in such another Parliament, King *Stephen* was Elected, and *Maud* the Empress put by, though not without some stain of perfidiousness upon all those, and *Stephen* himself especially, who had sworn in her Fathers Life-time, to acknowledge her for their Sovereign after his decease.

Fifthly, In King *Richard* the First's time, the King being absent in the *Holy Land*, and the Bishop of *Ely* then his Chancellor, being Regent of the Kingdom in his Absence, whose Government was intolerable to the People for his Insolence and manifold Oppressions, a Parliament was convened at *London*, at the Instance of *Earl John*, the Kings Brother, to treat of the great and weighty affairs of the King and Kingdom; in which Parliament this same Regent was depos'd from his Government; and another set up, viz. the Arch-Bishop of *Roan* in his stead. This Assembly was not conven'd by the King, who was then in *Palestine*, nor by any Authority deriv'd from him, for then the Regent and Chancellor must have call'd them together; but they met, as the Historian saies expressly, at the Instance of *Earl John*. And yet, in the Kings Absence, they took upon them to settle the publick Affairs of the Nation without Him.

Sixthly,

Sixthly, When King *Henry* the 3^d. died, his Eldest Son, Prince *Edward*, was then in the *Holy Land*, and came not Home till within the third Year of his Reign; yet immediately upon the Fathers Death, all the Prelates and Nobles, and four Knights for every Shire, and four Burgeses for every Borough, Assembled together in a great Council, and soled the Government till the King should return: Made a new Seal, and a Chancellor, &c.

And certified before the Judges, and committed to Parliament, its conclusive and binding authority, to infer from what has been said, that Writs of Summons are not so Essential to the being of Parliaments, as that the People of *England*, especially at a time when they cannot be had, may by Law, and according to our Old Constitution, Assemble together in a Parliamentary way without them, so treat of and settle the Publick Affairs of the Nation. And that if such Assemblies so convened, find the Throne Vacant, they may proceed not only to set up a Prince, but with the Assent and Concurrence of such Prince, to transact all Publick business whatsoever, without a new Election; they having as great Authority as the People of *England* can delegate to their Representatives.

II. The Acts of Parliaments not Formal nor Legal in all their Circumstances, are yet binding to the Nation so long as they continue in Force, and not liable to be questioned as to the Validity of them, but in subsequent Parliaments.

First, The two *Spencers*, *Temp. Edwardi Secundi*, were banished by Act of Parliament, and that Act of Parliament repealed by *Dures & Force*; yet was the Act of Repeal a good Law, till it was Annul'd 1 Ed. 3.

Secondly, Some Statutes of 11 *Rich. 2.* and attainders thereupon were Repealed in a Parliament held, *Ann. 21.* of that King, which Parliament was procur'd by forc'd Elections; and yet the Repeal stood good, till such time as in 1 *Henry 4.* the Statutes of 11 *Rich. 2.* were revived and appointed to be firmly held and kept.

Thirdly, The Parliament of 1 *Hen. 4.* consisted of the same Knights, Citizens and Burgeses that had served in the then last dissolved Parliament, and those Persons were by the Kings Writs to the Sheriffs commanded to be returned, and yet they passed Acts, and their Acts tho never confirmed, continue to be Laws at this day.

Fourthly, Queen *Mary's* Parliament that restored the Popes Supremacy, was notoriously known to be pack'd, inasmuch that it was debated in Queen *Elizabeth's* time, whether or no to declare all their Acts void by Act of Parliament. That course was then upon some prudential considerations declined; and therefore the Acts of that Parliament, not since repealed, continue binding Laws to this day.

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The reason of all this is, Because no inferior Courts have Authority to judge of the Validity or Invalidity of the Acts of such Assemblies, as have but so much as a colour of Parliamentary Authority.

The Acts of such Assemblies being Entered upon the Parliament Roll, and certified before the Judges of *Westminster-Hall* as Acts of Parliament, are conclusive and binding to them; because Parliaments are the only Judges of the Imperfections, Invalidities, Illegalities, &c. of one another.

The Parliament that call'd in *King Charles the Second*, was not assembled by the Kings Writ, and yet they made Acts, and the Royal assent was had to them; many of which indeed were afterwards confirmed, but not all, and those that had no Confirmation, are undoubted Acts of Parliament without it, and have ever since obtained as such.

Hence I Inferred that the present Convention, may, if they please, assume to themselves a Parliamentary Power, and in conjunction with such King or Queen as they shall declare, may give Laws to the Kingdom as a legal Parliament.

F I N I S

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